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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No._____

CARPINTERIA LEMON ASSOCIATION, a corporation, *Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

SEABOARD LEMON ASSOCIATION, a corporation, *Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

OXNARD CITRUS ASSOCIATION, *et al.*, *Petitioners,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

SOMIS LEMON ASSOCIATION, a corporation, *Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

SANTA CLARA LEMON ASSOCIATION, a corporation, *Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioners pray that a writ of certiorari issue to review the Decrees of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled cases on February 13, 1957.

Citations to Opinions Below.

The opinion of the United States Court of Appeals for the Ninth Circuit printed in Appendix B hereto is reported in 240 F. 2d 554.

Jurisdiction.

The decrees of the United States Court of Appeals for the Ninth Circuit, in all five of the above cases were entered on February 13, 1957 and are printed in Appendix B hereto. Rehearing was denied on February 7, 1957 (Appx. B). The jurisdiction of this Court is invoked under 28 U. S. C. A. 1254.

Questions Presented.

Whether the United Packinghouse Workers of America Local 78 was substantially the same Union as the United Fresh Fruit and Vegetable Union, L.I.U. No. 78, C.I.O., or whether it was a different Union from that which was originally certified by the National Labor Relations Board as the bargaining agent following the consent election.

Whether the record as a whole of the proceedings before the National Labor Relations Board substantially supported the finding that only a change of name and affiliation were involved and whether the Court below was thereby precluded from reviewing these Findings of the National Labor Relations Board.

Statute Involved.

The statutory provision here involved is Ch. 7, Labor Management Relations Act 1947, 29 U. S. C. A., Section 159. This is printed in Appendix A.

Statement.

The National Labor Relations Board issued orders on April 13, 1955, directing all five of the petitioners to bargain collectively with the United Packinghouse Workers of America Local 78. The five petitioners filed petitions in the United States Court of Appeals for the Ninth Circuit for review of the Order of the Board on July 21, 1955. The jurisdiction of the United States Court of Appeals for the Ninth Circuit was invoked under the provisions of 29 U. S. C. A. 160 f. The United States Court of Appeals in a two to one decision upheld the decision of the Board in an opinion dated December 11, 1956, and the Court entered decrees enforcing the orders of the Board in all five cases on February 13, 1957.

The petitioners in all five of the cases here before the Court are separate nonprofit cooperative associations engaged in the harvesting, grading and packing of citrus fruit.

In November of 1953, a consent election was conducted by the National Labor Relations Board in each of petitioners' five plants, and the United Fresh Fruit and Vegetable Workers L.I.U., No. 78, C.I.O. (hereinafter called "Fruit and Vegetable Union") was elected by a majority of the employees, and in the latter part of November, 1953, the Board certified the said Union as the exclusive bargaining representative of all of the employees in the petitioners' five plants. At this time the said United Fresh Fruit and Vegetable Workers L.I.U., No. 78, C.I.O. was an independent Union chartered directly by the C.I.O. as a Local without affiliation with any of the C.I.O.'s international Unions.

Collective bargaining was begun and continued for approximately three months when the majority of the

workers in each of the five plants signed and delivered to petitioners a petition repudiating the Union and demanding that henceforth the petitioners bargain with the "Employees' Committee". Petitioners refused to bargain any further with the Union and the Fruit and Vegetable Union thereupon filed Unfair Labor Practice charges against all five of the petitioners.

Shortly after these charges were filed the Fruit and Vegetable Union became involved in financial and organizational difficulties [R—S.C. 236, 239]*, and on March 1, 1954, the National C.I.O. appointed one Ken Gillie as administrator of the Union [R—S.C., 234], and the administratorship continued until the charter of the said Union was terminated on or about July 1, 1954.

During this time a Committee on Jurisdiction within the National C.I.O. had held a number of meetings and had recommended that the Fruit and Vegetable Union affiliate with the United Packinghouse Workers of America International C.I.O., an international Union holding membership in the C.I.O. [R—S.C., 231]. These recommendations were subsequently carried out and on or about July 1, 1954, the C.I.O. cancelled the charter of United Fresh Fruit and Vegetable Workers L.I.U., No. 78 [R—S.C. 228], and the Packinghouse Workers of America International C.I.O. issued a charter to United Packinghouse Workers of America Local 78 (hereinafter called the "Meat Packers Local 78") [R—S.C., 228, 229]. Thereupon, the Meat Packers International appointed its Vice President, one Anthony T. Stephens, whose offices were in Chicago, Illinois, as administrator in charge

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*R—Record.
S.C.—Santa Clara.

of the Meat Packers Local 78 [R—C., 117].* The executive board of the Meat Packers International also appointed one Gilbert Simonson, an international representative of the Meat Packers International as deputy administrator of the Meat Packers Local 78. Gilbert Simonson as deputy administrator worked under the direction and control of administrator Stephens, whose offices were in Chicago [R—C., 114, 117]. Under the administratorship of Anthony T. Stephens and deputy administrator Gilbert Simonson there were no officers and there was no executive board in Meat Packers Local 78, all offices and the said executive board having been set aside [R—C., 118, 119]. The said administrator and the deputy administrator both appointed by the International Union holds and exercises complete power and authority over the Meat Packers Local 78 [R—C., 118, 119].

On or about the 21st day of September, 1954, the Regional Director of the National Labor Relations Board, over the objection of the petitioners [R—S.C., 36], amended the certifications previously issued substituting the Meat Packers Local 78 as the exclusive bargaining representative for the employees in all five of the petitioners' plants in place of the Fruit and Vegetable Union [R—S.C., 42, 43].

The Trial Examiner of the National Labor Relations Board made a finding of fact to the effect that there was merely a change of name and affiliation. The National Labor Relations Board adopted these findings, and the United States Court of Appeals for the Ninth Circuit upheld the Board (majority opinion—Appx. B). The

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*R—Record.
C—Carpinteria.

minority of the Court, however, in a dissenting opinion, held that the facts showed conclusively that the two Locals—the Fresh Fruit and Vegetable Union, No. 78, and the Packinghouse Workers Union Local 78—were entirely different entities and that the National Labor Relations Board had certified an entirely different Union than that voted for in the consent election by the employees of the petitioners' five plants (dissenting opinion—Appx. B.)

Reasons for Granting the Writ.

1. The decision of the court below in the instant case is directly in conflict with the decision of the United States Court of Appeals for the Sixth Circuit in the case of *Dickey v. National Labor Relations Board*, 217 F. 2d 652. The *Dickey* case presented the same identical question of law in a strikingly similar fact situation. Referring to the *Dickey* case in his dissenting opinion in the instant case in the court below, Judge Fee said:

> "In the above cited case [*Dickey v. National Labor Relations Board*, Sixth Circuit, 217 F2d 652 referred to above], an amendment to certification was held void upon circumstances which afford no logical distinction. Here, if another election had been held it is apparent United Packinghouse Workers of America Local would not have been chosen as the bargaining agent.
>
> "The two Unions are not identical. The engagements of the previous Local toward the workers employed by the various appellants and toward the employers are not binding on the present unit . . ."

2. Settlement of this question by this Court is of great importance because the rights of all of the em-

ployees in petitioners' five plants are involved. These workers originally voted to be represented by the Fruit and Vegetable Union Local 78. Their Union was placed under an administrator by the C.I.O. Subsequently and while such administratorship was still in effect, the charter was cancelled by the C.I.O. and a new charter was issued by the Packinghouse Workers of America International to the United Packinghouse Workers of America Local 78, and contemporaneously with this a Vice President of the Meat Packers International in Chicago was appointed by the International to take control of the Local as an administrator. The Local at this time had no officers and no executive board. Under these circumstances the Regional Director of the National Labor Relations Board substituted the Meat Packers Local 78 as the exclusive bargaining agent for all of petitioners' employees. In his dissenting opinion in the instant case in the court below, Judge Fee said (dissenting opinion—Appx. B):

> "The sanction of the courts of such control of a Local without consent thereto by Local workers at a particular plant at a board supervised election is undemocratic and against the essential interests of the public at large."

Moreover, the question before the Court is of great importance because throughout the United States Unions are constantly reorganizing, amalgamating, merging with other Unions, or are changing their affiliations. In these cases the National Labor Relations Board is constantly faced with the problem of determining when and under what circumstances the successor Union can be substituted to the bargaining rights of the Union originally elected by the employees. One of the most important rights given the workers by the Labor Management Relations

Act is the right to be represented for collective bargaining by representatives of their own choosing. These rights of the workers are always affected by any decision of the National Labor Relations Board substituting a successor Union for a Union previously chosen at a consent election. It is, therefore, particularly important that the authority of the Board in this type of situation be clearly defined by the highest Judicial Authority.

3. The decision of the court below is believed to be erroneous and the conflicting decision of *Dickey v. N. L. R. B., supra,* correct. In the *Dickey* case, following the consent election, the Blacksmiths were certified as the exclusive bargaining representatives of the petitioners' employees. Following this election and certification, the Blacksmiths merged with the Boilermakers under a plan whereby the Blacksmiths were given three out of sixteen Vice Presidents. The Blacksmiths had complete control of the Union which the petitioners' employees voted for in the consent election. After the merger the Blacksmiths had three-sixteenths of the control of the new Union. In that case the Board approved, without discussion, the finding of the Trial Examiner that the Blacksmiths did not lose their identity as representatives of the employees by reason of the merger and that so far as the employer was concerned the situation represented only a "change of name". The Board contended that the finding of the Trial Examiner on this point was a finding of fact and that the approval by the Board of the substitution of the Boilermakers for the Blacksmiths was binding on the Appellate Court. In overruling the Board, the United States Court of Appeals for the Sixth Circuit held:

> "The question is squarely presented whether by amendment of the certification of representation the

Regional Director is authorized to substitute as exclusive bargaining representative a Union different from the one actually chosen by the men and certified . . ."

The Court then concluded:

". . . the regulations of the Board do not invest the Regional Director with such authority and if so they violate the express provision of 29 U. S. C. Supp. V, Section 157; 29 U.S.C.A. Section 157".

In the instant cases the facts are more extreme than in the *Dickey* case. In these cases petitioners' employees voted for the Fruit and Vegetable Union. At the time of the consent election the officers of the Fruit and Vegetable Union were in complete control of that Union. On September 21, 1954, when the Regional Director of the National Labor Relations Board substituted the Meat Packers Local 78 for the Fruit and Vegetable Union, the new Union was under the complete control of a Vice President of the Meat Packers International acting in the capacity of an administrator. Petitioners' employees had never voted for the Meat Packers International from whence came the authority and the control of the Meat Packers Local 78. The action of the Board in substituting the Meat Packers Local 78 was therefore in violation of the right of the workers to be represented by a union of their own choice.

The majority of the Court below held:

"The Board adopted the Trial Examiner's finding that there was merely a change of name and affiliation. From our consideration of the record as a whole we find that this determination is supported by substantial evidence. We are precluded by law

from reexamining any Board finding of fact in an Unfair Labor Practice case which is so supported. . . ."

Petitioners respectfully submit that this was error. The question involved was not a question of fact, rather a question of law. It is conceded that there was a change of name and a change of affiliation, and that Trial Examiner's and the Board's findings of fact, as regards these two matters, are correct. However, this does not resolve the legal question of whether or not the Meat Packers Union Local 78 is the same Union as the Union voted for in the consent election in view of all the other facts and circumstances of the case. The Trial Examiner's finding that there was only a change of name and a change of affiliation indicates that he has ignored or overlooked all the other undisputed facts relating to the transfer of the defunct Fresh Fruit and Vegetable Union Local 78 from an administrator appointed by the C.I.O. to an administrator appointed by and controlled by the United Packinghouse Workers of America International. It also indicates that he has ignored (the National Labor Relations Board and the majority of the Court below have also ignored) the undisputed fact that the administrator appointed and controlled by the United Packinghouse Workers of America International and deriving his power and authority solely from the said International, was in complete and absolute control of the new Union. These facts were undisputed, but the Trial Examiner (and the National Labor Relations Board and the court below) resolved the question of law involved by simply finding as a fact that there was only a change of name and a change of affiliation.

In referring to this point the dissenting Judge in the instant case in the court below stated:

". . . The clause in the consent election gave no authority for this substitution without the consent of the electors. The majority passes over this point in silence."

* * * * * * * *

". . . The assumption of dictatorial powers by the administrator and the deputy proves that the representation of the workers by the present unit is not legally or morally identical with the former Local which is now destroyed.

"The sanction of the courts of such control of the Local without consent thereto by Local workers at a particular plant, at a board supervised election, is undemocratic and against the essential interests of the public at large."

The majority of the court below further erred in deciding that the record as a whole contained substantial evidence to support the Board's finding that there was merely a change of name and affiliation. The court cited the case of *Universal Camera Corp. v. N. L. R. B.*, 340 U. S. 474, as authority for holding that it was precluded by law from re-examining any Board finding so supported. Petitioners respectfully submit that the record as a whole shows conclusively that in addition to a change of name and a change of affiliation there was a complete transfer of power and authority from the Fruit and Vegetable Union which had been voted for in the consent election to the Meat Packers International which wielded this power and authority through its Vice President whom it appointed administrator of the new Union. The majority opinion states in support of its decision that although the

Packinghouse Workers sent in a new financial administrator to replace the one previously furnished by the National C.I.O., the officers remained the same. As the dissenting opinion points out, however, in a footnote, this is contrary to the evidence as set out in the record [R—C., 118, 119]. Under the administrator appointed by the Meat Packers International there was no executive board and there were no officers [R—C., 118, 119].

The majority cited the case of *Universal Camera Corp. v. N. L. R. B., supra,* in support of its conclusion that it is precluded by law from reviewing the findings of the Board. Petitioners respectfully submit that the *Universal Camera Corp.* decision not only does not preclude a review of the Board's findings but on the contrary actually enjoins a review in such a case as this. In that case this Court held:

> "We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that the courts must now assume more responsibility for the reasonableness and fairness of the Labor Board's decisions than such courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed upon them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed on the record as a whole by courts invested with the authority and enjoying the prestige of courts of appeal. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before

a court of appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of testimony of witnesses or its informed judgment on matters within its special competence, or both."

Conclusion.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

IVAN G. MCDANIEL,

LEON L. GORDON,

Counsel for Petitioners.

April 30, 1957.

APPENDIX A.

29 U. S. C. A.
Sec. 159.

Representatives and Elections—(a) Exclusive representatives; employees' adjustment of grievances directly with employer.

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: PROVIDED, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect; PROVIDED FURTHER, That the bargaining representative has been given opportunity to be present at such adjustment.

APPENDIX B.

United States Court of Appeals for the Ninth Circuit.

Carpinteria Lemon Association, a corporation, Petitioner, vs. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner vs. Carpinteria Lemon Association, a corporation, Respondent. No. 14,823.

Seaboard Lemon Association, a corporation, Petitioner, vs. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner, vs. Seaboard Lemon Association, a corporation, Respondent. No. 14,824.

Oxnard Citrus Association, et al., Petitioners, vs. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner, vs. Oxnard Citrus Association, et al., Respondents. No. 14,838.

Somis Lemon Association, a corporation, Petitioner, vs. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner, vs. Somis Lemon Association, a corporation, Respondent. No. 14,839.

Santa Clara Lemon Association, a corporation, Petitioner, vs. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner, vs. Santa Clara Lemon Association, a corporation, Respondent. No. 14,840.

Dec. 11, 1956.

Upon Petitions for Review and Petitions for Enforcement of Orders of the National Labor Relations Board.

Before: HEALY and FEE, Circuit Judges, and SOLOMON, District Judge:

SOLOMON, District Judge:

These five cases involve orders issued by the National Labor Relations Board against five associations of citrus

fruit growers operating in the vicinity of Oxnard, California. In each case, the Board asks that we enforce its order and the association asks that we set it aside.

The facts and issues, with minor exceptions, are basically similar in all five cases. Each association was formed to process and pack citrus fruit grown by its members. In November, 1953, as the result of Board-conducted elections held pursuant to consent agreements, the United Fresh Fruit and Vegetable Growers, Local Industrial Union No. 78, CIO, was chosen the bargaining agent for the employees in each association and was certified as such by the Board. Shortly thereafter, the union began negotiations with each association for a collective bargaining contract.

Early in 1954, the associations refused to negotiate further with the union on the ground that they had received petitions from their employees repudiating the union as their bargaining agent. In each case the petition requested the association to deal with an employee committee and not with the union. However, even prior thereto, negotiations had not been fruitful. In fact, negotiations had already been broken off by two of the associations because of disagreement with the union on the issue of union security. The union then filed unfair labor charges against the associations alleging, among other things, their refusal to bargain.

At the time the charges were filed, the Fruit and Vegetable Union was chartered as a local union by the national CIO. In the spring of 1954, the national CIO proposed to the membership of the Fruit and Vegetable Union that they change its status from a local union chartered by the national CIO to a local union chartered by the United Packinghouse Workers of America, a CIO affiliate.

A number of membership meetings were held in the area served by the union in California and Arizona. At the meeting held in the Oxnard area, approximately 150 members from these five associations voted unanimously in favor of the proposal. As a result of these meetings the union dropped its direct connection with the CIO and became affiliated through the Packinghouse Workers. It surrendered its CIO charter and received a Packinghouse Workers charter, taking on the status and name of a Packinghouse Workers local.

The expiring union and the successor union then joined in requesting the Regional Director of the Board to change the certifications previously issued to reflect the new designation of the union. The Director granted the motion and amended the certificates accordingly.

Hearings on the unfair practice charges were held and the Board thereafter ordered the associations to bargain with the Packinghouse local. The associations contend that this ruling is unlawful because the Packinghouse local is a new and different union from the Fruit and Vegetable Union originally chosen as bargaining agent.

The right of a successor union to assume the status of certified bargaining agent held by its predecessor depends on a factual issue—is the new union a continuation of the old union under a new name or affiliation or is it a substantially different organization? National Labor Relations Board v. Harris-Woodson Co., 4 Cir., 179 F. 2d 720; Continental Oil Co. v. National Labor Relations Board, 10 Cir., 113 F. 2d 473.

This factual issue was contested before the Trial Examiner who heard the charges against the associations. Although the Packinghouse Workers sent in a new financial administrator to replace the one previously furnished

by the national CIO, the officers remained the same. There was no dilution of membership as a result of the change. Contracts concluded by the Fruit and Vegetable Union remained in effect except for the substitution of the union's new name. This testimony was not contradicted.

The Board adopted the Trial Examiner's finding that there was merely a change of name and affiliation. From our consideration of the record as a whole, we find that this determination is supported by substantial evidence. We are precluded by law from re-examining any Board finding of fact in an unfair labor practice case which is so supported. National Labor Relations Act, §10(e), 29 U. S. C. §160(e); Universal Camera Corp. v. National Labor Relations Board, 340 U. S. 474.

Each association objects to the Board's order that it bargain with the union on the additional ground that it was relieved of this duty when a majority of its employees repudiated the union. Some years ago the Board set up a working rule that in the absence of "unusual circumstances" an employer is required to bargain with the certified union for one year even though the union is repudiated within the year by a majority of the employees in the bargaining unit. This rule was adopted to give the elected union a fair chance to bargain and to minimize obstructionist tactics by employers. In the present cases the repudiations occurred within two to five months after the certifications, and the Board applied the one-year rule.

The same argument here advanced by the associations was considered and rejected in Brooks v. National Labor Relations Board, 348 U. S. 96. The Court there decided that the one-year rule was within the power of the Board to make and its application was a matter within the Board's discretion. We find that the Board in these cases did not abuse that discretion.

The associations next contend that the Board erred in finding that they were guilty of unfair labor practices by granting wage increases without consulting with the certified bargaining agent. Such unilateral increases violate an employer's duty to bargain with the certified union. May Department Stores Co. v. National Labor Relations Board, 326 U. S. 376. The associations assert that this rule is not applicable to these cases because the union had already been repudiated by a majority of the employees in each plant. In view of our earlier conclusion that the repudiation petitions did not remove the associations' duty to bargain with the union, it follows that they were not justified in granting the wage increases without consulting with the union.

The Somis and Oxnard Associations contend that they were justified in granting unilateral wage increases on the additional ground that their negotiations had actually broken down. They assert that the resulting impasse freed them from any duty to bargain with the union over wages.

After certification of the Fruit and Vegetable Union in November, 1953, Somis and Oxnard met with the union for collective bargaining. The discussions dealt primarily with union security. The union demanded a union shop and the associations insisted upon an open shop. When it became apparent that an agreement would not be reached on this issue, each association announced that further discussions would be useless and terminated the negotiations. They refused to resume negotiations even though the union offered to continue negotiations in other areas, such as wages, which had not yet been discussed. Written requests by the union failed to bring about a resumption of negotiations in spite of the fact that the union

offered to consider compromising on its union shop demand if an otherwise satisfactory agreement could be reached.

The Board found that no impasse had arisen. The evidence strongly suggests that the associations deliberately selected the most controversial issue on which to commence negotiations in order to create a deadlock and break off negotiations. Viewing the record as a whole, we find that the Board's finding is supported by substantial evidence.

The Santa Clara case raises two additional issues. Santa Clara contends that there is insufficient evidence to sustain the Board's findings:

(1) that it discriminated against Jewell Luttrell in her job assignments because of her union activities; and

(2) that it threatened its employees with loss of earnings, promotion and employment because of their interest in the union.

Mrs. Luttrell was a leader in the drive to unionize Santa Clara. She became chief shop steward after the union was certified as bargaining agent. During the period preceding the drive, she was employed on the fruit washer except for slack times when she worked on the fruit grader. In September, 1953, two months before the election, the practice of assigning her to the grader stopped, and she suffered loss of pay during the periods in which the washer did not operate.

The coercion-by-threat charge contains both general and specific allegations. It charges that Roger Sayre, the association's foreman, threatened to fire an employee if he continued to support the union and that he also threatened to fire all union adherents. It charges that at various times he told one or more employees that they would not be promoted unless they stopped working for the

union, and that if it were not for the union, they would earn more money and would work full time instead of part time.

Mr. Sayre contradicted Mrs. Luttrell's testimony that she suffered discrimination because of her union activities, and he denied that he had made any of the coercive statements which various witnesses attributed to him. From the record as a whole, including the Trial Examiner's comments on the personal impressions made by the witnesses, we conclude that there is substantial evidence to support the Board's findings with respect to Mrs. Luttrell's job assignments and the association's coercive statements.

There is no merit in Santa Clara's contention that the variances in dates between the allegations and the proof, which range from five days to ten weeks, are fatal to the findings as a matter of law. M. H. Ritzwoller Co. v. National Labor Relations Board, 7 Cir., 114 F. 2d 432.

All objections of the associations have been examined and found wanting, the orders of the Board will be enforced.

Orders enforced.

JAMES ALGER FEE, Circuit Judge, dissenting:

The amendment of certification of election made by the Regional Director on *November 21, 1954,* naming the United Packinghouse Workers of America in place of United Fresh Fruit & Vegetable Workers, LIU, which was actually chosen and balloted for by the workers in the plant on *November 4, 1953,* over a year earlier, is null and void. The clause in the consent election agreement gave no authority for this substitution without consent of the electors. The majority passes over this point in silence.

All of the negotiations and incidents related to the period when United Fresh Fruit & Vegetable Workers, LIU, was the certified agent. The employers objected to the entry on the scene of United Packinghouse Workers of America after their respective employers had protested against this substitution and after the national organization had cancelled the charter of United Fresh Fruit & Vegetable Workers, LIU, which was the certified bargaining unit after the election held more than a year previously. The device of conferring the same number 78 on the new unit cannot avail.

"The vote of the employees is the decisive factor in securing 'that freedom of choice which is the essence of collective bargaining.' * * * Here the men voted for the Blacksmiths and the result was duly certified. They did not vote for the Boilermakers. No second election was held after that certified February 2, 1953." Dickey v. National Labor Relations Board, 6 Cir., 217 F. 2d 652, 655.

In the above cited case an amendment to certification was held void upon circumstances which afford no logical distinction. Here, if another election had been held, it is apparent United Packinghouse Workers of America local would not have been chosen as the bargaining agent.

The two unions are not identical.[1] The engagements of the previous local toward the workers employed by the various appellants and toward the employers are not binding on the present unit. M & M Wood Working Com-

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[1]The opinion of the majority says, at page 3, that "the officers remained the same." Yet in the most recent of the hearings there is testimony, by the deputy administrator of the Packinghouse Local, to the effect that "under the administratorship you don't have no officers of a union." The record also shows that the President and Vice-President and Secretary-Treasurer of the Fruit & Vegetable Local, LIU, at the time of the last hearing, no longer

pany v. National Labor Relations Board, 9 Cir., 101 F. 2d 938.

We adopt the statement of the brief of Santa Clara Lemon Association as to the changes which prove conclusively that these two locals are entirely different entities and that the employees of the various packinghouses might well desire to be represented by a different group.

"The following summary of the pertinent facts and the law clearly illustrates a change of union without the employees' consent: (1) Petitioner consented to a Board election with the Fruit & Vegetable Union on the ballot; (2) a majority of the employees voted for the Fruit & Vegetable Union on November 4, 1953; and it was duly certified by the Board on November 13, 1953; (3) Petitioner did not consent to an election having the Meatpackers' International or the Meatpackers' Local on the ballot; (4) the employees did not vote for the Meatpackers' International or the Meatpackers' Local; (5) no second election was held after the November 4, 1953 election; (6) the employees in Petitioner's production unit had a basic statutory right to express their choice; (7) their choice was expressed in favor of the Fruit & Vegetable Union but not in favor of the Meatpackers' International or the Meatpackers' Local; (8) the Meatpackers' International amalgamated with the Fruit & Vegetable Union, and in the process absorbed the latter; (9) in the

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retained their former offices under the Packinghouse Local. The ex-President is now stationed in Phoenix, Arizona, as a business agent of the present union. The former Vice-President has a broader territorial scope, but is now only a business agent of the Packinghouse Local. Helen Parker, previously Secretary-Treasurer of the Fruit & Vegetable Local, LIU, is now a secretary at Salinas. It is further reported: "Q. Does Local No. 78 of the Packing House Workers at the present time have an Executive Board? A. In an administratorship, I don't, well, you just don't have an Executive Board."

amalgamation the charter and seals of the Fruit & Vegetable Union were cancelled, its office titles were set aside, its officers were removed; (10) following the merger the Meatpackers' International was in complete and exclusive control through Administrator Stephens and Deputy Administrator Simonson; (11) the Meatpackers' International chartered, set up and operated through its new Meatpackers' Local, which it maintained in an administratorship status; (12) the administrator of the Meatpackers' Local is Anthony T. Stephens, a vice-president of the Meatpackers' International; (13) Mr. Stephens operates from his offices in Chicago, Illinois where the home offices of the Meatpackers' International are located; (14) the deputy administrator of the Meatpackers' Local is Gilbert Simonson, who is an international representative of the Meatpackers' International; (15) Simonson's appointment as deputy administrator was made by the excutive board of the Meatpackers' International, which is his employer; (16) Simonson works under the direction of Administrator Stephens; (17) Simonson's offices and those of the Meatpackers' Local are in Salinas, California; (18) the Meatpackers' International has 150,000 members as compared with 18,000 members in the Fruit & Vegetable Union; (19) the Fruit & Vegetable Union had complete control of the union for which the employees voted on November 4, 1953—they have no control of the amalgamated union, either International or Local; (20) the charges in the instant action were filed by the Fruit & Vegetable Union, and not by the Meatpackers' Union (Local or International).

"The employees in the instant case voted to bargain collectively through the Fruit & Vegetable Union. They have never voted to bargain through a union whose official representation gives control to an organization other than the Fruit & Vegetable Union. In the instant case,

and in the absence of a second election, every detail of administration and control was arbitrarily taken over by the 150,000-member Meatpackers' International from the 18,000-member Fruit & Vegetable Union. The Fruit & Vegetable Union has disappeared as an entity. Deputy Administrator Simonson doesn't even know what offices or officers were in the Fruit & Vegetable Union.

"The new Meatpackers' Local controls neither administrative details, nor policy—such matters are under the exclusive control of the Meatpackers' International acting through Administrator Stephens and Deputy Administrator Simonson."

The proposition that the workers in each of these voted for representation by United Packinghouse Workers Local is negated by the following factors: (1) The charter of the former local was direct from National CIO, whereas the present has an entirely different charter as a local of Meatpackers' International. (2) The Trusteeship of all the affairs of this local and of all its bargaining powers was apparently not possible under its former affiliation. (3) The assumption of dictatorial powers by the Administrator and the Deputy proves that the representation of the workers by the present unit is not legally or morally identical with the former local, which is now destroyed.

The sanction of the courts of such control of a local without consent thereto by local workers at a particular plant at a Board supervised election is undemocratic and against the essential interests of the public at large.

The cause should be remanded for further consideration by the Board, which has machinery to work out a proper result.

(Endorsed:) Opinion and Dissenting Opinion. Filed Dec. 11, 1956.

Paul P. O'Brien, Clerk.

United States Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Thursday, February 7, 1957.

Before: HEALY and FEE, Circuit Judges, and SOLOMON, District Judge.

ORDER DENYING PETITIONS FOR REHEARINGS.

On consideration thereof, and by direction of Healy, Circuit Judge, and Solomon, District Judge, IT IS ORDERED that the petitions of petitioners, filed January 9, 1957, and within time allowed therefor by rule of court for rehearings of the above causes be, and each of them hereby is denied.

In the United States Court of Appeals for the Ninth Circuit.

Carpinteria Lemon Association, a corporation, Petitioner, v. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner v. Carpinteria Lemon Association, a corporation, Respondent. No. 14,823.

DECREE ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Before: Healy and Fee, Circuit Judges, and Solomon, District Judge.

This cause came on to be heard upon the petition of Carpinteria Lemon Association, a corporation, to review an order of the National Labor Relations Board dated April 13, 1955, and upon the cross-petition of the National Labor Relations Board to enforce said order. The Court heard argument of respective counsel on April 6, 1956, and has considered the briefs and the transcript of record filed in this cause. On December 11, 1956, the Court,

being fully advised in the premises, handed down its decision enforcing the order of the Board. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that Carpinteria Lemon Association (hereinafter called the Association), and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Packinghouse, Workers of America, Local 78, CIO, as the exclusive representative of all the Association's production and maintenance employees at its Carpinteria, California, establishment, excluding clerical employees, guards, professional employees, and supervisors as defined in the National Labor Relations Act (hereinafter called the Act).

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Packinghouse Workers of America, Local 78, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the Act.

(a) Upon request, bargain collectively with United Packinghouse Workers of America, Local 78, CIO, as the exclusive representative of all the employees in the

above-described appropriate unit, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its establishment in Carpinteria, California, copies of the notice attached hereto marked "Appendix A." Copies of the notice, to be furnished by the Regional Director for the Twenty-first Region of the National Labor Relations Board (Los Angeles, California), shall, after being signed by the Association's representative, be posted by the Association immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Association to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the aforesaid Regional Director in writing, within ten (10) days from the date of this Decree, what steps the Association has taken to comply herewith.

Endorsed. Decree filed and entered Feb 13 1957

/s/ PAUL P. O'BRIEN
Paul P. O'Brien
Clerk

[A TRUE COPY,
ATTEST:
Paul P. O'Brien
Clerk]

Appendix A

Notice to All Employees

Pursuant to a Decree of the United States Court of Appeals, enforcing an Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

> We will bargain collectively, upon request, with United Packinghouse Workers of America, Local 78, CIO, as the exclusive representative of all the employees in the bargaining unit described herein, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an agreement is reached, embody it in a signed contract. The bargaining unit is:
>
> > All production and maintenance employees in our Carpinteria establishment, excluding all clerical employees, guards, professional employees, and supervisors as defined in the National Labor Relations Act.

We will not by so failing or refusing to bargain, or in any like manner, interfere with, restrain, or coerce our employees in the exercise of their right of self-organization, to form, join, or assist any labor organization, to join or assist United Packinghouse Workers of America, Local 78, CIO, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such

rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the National Labor Relations Act.

CARPINTERIA LEMON ASSOCIATION
Employer

By.....
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

In the United States Court of Appeals for the Ninth Circuit.

Seaboard Lemon Association, a corporation, Petitioner, v. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner, v. Seaboard Lemon Association, a corporation, Respondent. No. 14,824.

DECREE ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Before: Healy and Fee, Circuit Judges, and Solomon, District Judge.

This cause came on to be heard upon the petition of Seaboard Lemon Association, a corporation, to review an order of the National Labor Relations Board dated April 13, 1955, and upon the cross-petition of the National Labor Relations Board to enforce said order. The Court heard argument of respective counsel on April 6, 1956, and has considered the briefs and the transcript of record filed in this cause. On December 11, 1956, the Court, being fully advised in the premises, handed down its decision enforcing the order of the Board. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that Seaboard Lemon Association (hereinafter called the Association), and its officers, agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Refusing to bargain collectively with United Packinghouse Workers of America, Local 78, CIO, as the exclusive representative of all the Association's production and maintenance employees at its Oxnard, California, establishment, excluding clerical employees, guards, pro-

fessional employees, and supervisors as defined in the National Labor Relations Act, as amended, (hereinafter called the Act).

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Packinghouse Workers of America, Local 78, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action, which the National Labor Relations Board has found will effectuate the policies of the Act.

(a) Upon request, bargain collectively with United Packinghouse Workers of America, Local 78, CIO, as the exclusive representative of all the employees in the above-described appropriate unit, and if an understanding is reached embody such understanding in a signed agreement.

(b) Post at its establishment in Oxnard, California, copies of the notice attached hereto and marked "Appendix A." Copies of the notice, to be furnished by the Regional Director of the National Labor Relations Board for the Twenty-First Region, (Los Angeles, Calif.) shall, after being signed by the Association's representative, be posted by the Association immediately upon receipt thereof and maintained by it for sixty (60) consecutive days there-

after in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Association to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the aforesaid Regional Director in writing, within ten (10) days from the date of this Decree, what steps the Association has taken to comply herewith.

Endorsed. Decree filed and entered Feb 13 1957

/s/ PAUL P. O'BRIEN
Paul P. O'Brien
Clerk

[A TRUE COPY,
ATTEST:
Paul P. O'Brien
Clerk]

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decree of the United States Court of Appeals, enforcing an Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL bargain collectively, upon request, with United Packinghouse Workers of America, Local 78, CIO, as the exclusive representative of all the employees in the bargaining unit described herein, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if agreement

is reached, embody it in a signed contract. The bargaining unit is:

All production and maintenance employees in our Oxnard establishment, excluding all clerical employees, guards, professional employees, and supervisors as defined in the National Labor Relations Act.

WE WILL NOT by so failing or refusing to bargain, or in any like manner, interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to join or assist United Packinghouse Workers of America, Local 78, CIO, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the National Labor Relations Act.

SEABOARD LEMON ASSOCIATION,
Employer

By.....
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

In the United States Court of Appeals for the Ninth Circuit.

Oxnard Citrus Association, *et al.*, Petitioners, v. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner, v. Oxnard Citrus Association, *et al.*, Respondents. No. 14,838.

DECREE ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Before: Healy and Fee, Circuit Judges, and Solomon, District Judge.

This cause came on to be heard upon the petition of Oxnard Citrus Association, a California corporation, to review an order of the National Labor Relations Board dated April 13, 1955, and upon the cross-petition of the National Labor Relations Board to enforce said order. The Court heard argument of respective counsel on April 6, 1956, and has considered the briefs and the transcript of record filed in this cause. On December 11, 1956, the Court, being fully advised in the premises, handed down its decision enforcing the order of the Board. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that Oxnard Citrus Association, (hereinafter called the Association) and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the labor organization now known as United Packinghouse Workers of America, Local 78, CIO, as the exclusive representative of all the Association's production and maintenance employees, excluding clerical employees, guards, professional employees, and supervisors as defined in the National Labor Relations Act (hereinafter called the Act).

(b) Interfering with the efforts of United Packinghouse Workers of America, Local 78, CIO, to bargain collectively with it on behalf of the employees in the above-described appropriate unit.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Packinghouse Workers of America, Local 78, CIO, as the exclusive representative of the employees in the appropriate unit described above, and if an understanding is reached embody such understanding in a signed agreement.

(b) Post at its plant in Oxnard, California, copies of the notice attached hereto marked "Appendix." Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region of the National Labor Relations Board (Los Angeles, California), shall after being duly signed by a representative of the Association, be posted by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Association to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the aforesaid Regional Director in writing, within ten (10) days from the date of this Decree, what steps the Association has taken to comply herewith.

Endorsed. Decree filed and entered Feb 13 1957

/s/ PAUL P. O'BRIEN
Paul P. O'Brien
Clerk

[A TRUE COPY,
ATTEST:
Paul P. O'Brien
Clerk]

Appendix

Notice to All Employees

Pursuant to a Decree of the United States Court of Appeals, enforcing an Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with United Packinghouse Workers of America, Local 78, CIO, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached we will embody it in a signed agreement. The bargaining unit is

> All production and maintenance employees, excluding all clerical employees, guards, professional employees, and supervisors as defined in the National Labor Relations Act.

We will not, by refusing to bargain, by unilateral action in regard to wages, or in any other manner, interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Packinghouse Workers of America, Local 78, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor

organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

OXNARD CITRUS ASSOCIATION
Employer

By.....
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

In the United States Court of Appeals for the Ninth Circuit.

Somis Lemon Association, a corporation, Petitioner, v. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner, v. Somis Lemon Association, a corporation, Respondent. No. 14,839.

DECREE ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Before: Healy and Fee, Circuit Judges, and Solomon, District Judge.

This cause came on to be heard upon the petition of Somis Lemon Association, a California corporation, to review an order of the National Labor Relations Board dated April 13, 1955, and upon the cross-petition of the National Labor Relations Board to enforce said order. The Court heard argument of respective counsel on April 6, 1956, and has considered the briefs and the transcript of record filed in this cause. On December 11, 1956, the Court, being fully advised in the premises, handed down its decision enforcing the order of the Board. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that Somis Lemon Association, (hereinafter called the Association) and its officers, agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Refusing to bargain collectively with the labor organization now known as United Packinghouse Workers of America, Local 78, CIO, as the exclusive representative of all the Association's production and maintenance employees, excluding clerical employees, guards, professional employees, and supervisors as defined in the National Labor Relations Act (hereinafter called the Act).

(b) Interfering with the efforts of United Packinghouse Workers of America, Local 78, CIO, to bargain collectively with it on behalf of the employees in the above-described appropriate unit.

2. Take the following affirmative action, which the National Labor Relations Board has found will effectuate the policies of the Act.

(a) Upon request, bargain collectively with United Packinghouse Workers of America, Local 78, CIO, as the exclusive representative of the employees in the appropriate unit described above, and if an understanding is reached embody such understanding in a signed agreement.

(b) Post at its Plant in Oxnard, California, copies of the notice attached hereto and marked "Appendix A". Copies of said notice, to be furnished by the Regional Director of the National Labor Relations Board for the Twenty-First Region, (Los Angeles, California) shall, after being duly signed by a representative of the Association, be posted by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Association to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the aforesaid Regional Director in writing, within ten (10) days from the date of this Decree, what steps the Association has taken to comply herewith.

Endorsed. Decree filed and Entered Feb. 13 1957

Paul P. O'Brien
Clerk

Appendix A

Notice to All Employees

Pursuant to a Decree of the United States Court of Appeals, enforcing an Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with United Packinghouse Workers of America, Local 78, CIO, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached we will embody it in a signed agreement. The bargaining unit is

> All production and maintenance employees, excluding all clerical employees, guards, professional employees, and supervisors as defined in the National Labor Relations Act.

We will not, by refusing to bargain, by unilateral action in regard to wages, or in any other manner, interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Packinghouse Workers of America, Local 78, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a

labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

SOMIS LEMON ASSOCIATION,
Employer,

By.....
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

In the United States Court of Appeals for the Ninth Circuit.

Santa Clara Lemon Association, a corporation, Petitioner, v. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner, v. Santa Clara Lemon Association, a corporation, Respondent. No. 14,840.

DECREE ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Before: Healy and Fee, Circuit Judges, and Solomon, District Judge.

This cause came on to be heard upon the petition of Santa Clara Lemon Association, a corporation, to review an order of the National Labor Relations Board dated April 13, 1955, and upon the cross-petition of the National Labor Relations Board to enforce said order. The Court heard argument of respective counsel on April 6, 1956, and has considered the briefs and the transcript of record filed in this cause. On December 11, 1956, the Court, being fully advised in the premises, handed down its decision enforcing the order of the Board. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that Santa Clara Lemon Association (hereinafter called the Association) and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the labor organization now known as United Packinghouse Workers of America, Local 78, CIO, as the exclusive representative of all the Association's production and maintenance employees, excluding clerical employees, guards, professional

employees, and supervisors as defined in the National Labor Relations Act (hereinafter called the Act).

(b) Refusing to assign any employee to work because of interest in or activity on behalf of any labor organization.

(c) By unilateral action on wages, by threats, by discriminating in work assignments, or in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named Union or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the Act:

(a) Make Jewel Luttrell whole for any loss of wages suffered because of the discrimination against her.

(b) Upon request, bargain collectively with United Packinghouse Workers of America, Local 78, CIO, as the exclusive representative of the employees in the appropriate unit described above, and if an understanding is reached embody such understanding in a signed agreement.

(c) Upon request, make available to the Board or its agents, for examination and copying, all records neces-

sary to an analysis of the amount of back pay due in accordance with this Decree.

(d) Post at its plant in Oxnard, California, copies of the notice attached hereto marked "Appendix." Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region of the National Labor Relations Board (Los Angeles, California), shall, after being duly signed by a representative of the Association, be posted by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Association to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the aforesaid Regional Director in writing, within ten (10) days from the date of this Decree, what steps the Association has taken to comply herewith.

Endorsed. Decree filed and Entered Feb 13 1957

/s/ PAUL P. O'BRIEN
Paul P. O'Brien
Clerk

[A TRUE COPY,
ATTEST:
Paul P. O'Brien
Clerk]

Appendix A

Notice to All Employees

Pursuant to a Decree of the United States Court of Appeals, enforcing an Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will bargain collectively upon request with United Packinghouse Workers of America, Local 78, CIO, in respect to rates of pay, wages, hours of employment, and other conditions of employment and if an understanding is reached we will embody it in a signed agreement. The bargaining unit is

> All production and maintenance employees, excluding all clerical employees, guards, professional employees, and supervisors as defined in the National Labor Relations Act.

We will make Jewel Luttrell whole for any loss of earnings she has suffered by our refusal to assign her to work on the grader.

We will not by unilateral action on wages, by threats, by dealing with an employee committee, or by discriminating in work assignments, or in any other manner, interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Packinghouse Workers of America, Local 78, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such

activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

SANTA CLARA LEMON ASSOCIATION
(Employer)

By.....
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 964

CARPINTERIA LEMON ASSOCIATION, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below in the five cases involved herein (Pet. App. B, 3–13) is reported at 240 F. 2d 554. The findings of fact, conclusions of law, and order of the National Labor Relations Board in each case are reported at 112 NLRB 93, 109, 115, 121, 130, respectively.[1]

[1] The five cases were separate proceedings before the Board. All five were thereafter consolidated for argument before the court below which issued a single opinion disposing of the cases.

JURISDICTION

The judgments of the court below were entered on February 13, 1957 (Pet. App. B, 14–35). The petition for certiorari was filed on May 2, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254. See also Section 10 (e) of the National Labor Relations Act, as amended, 29 U. S. C. 160 (e).

QUESTION PRESENTED

Whether substantial evidence on the record as a whole supports the Board's finding that a union, which was originally chartered directly by the CIO and had been certified by the Board as the bargaining representative of petitioners' employees, continued to be substantially the same organization with only a change in name and affiliation following its affiliation with an international union of the CIO.

STATUTE INVOLVED

Section 9 (a) of the National Labor Relations Act, as amended (61 Stat. 143, 29 U. S. C. 159), provides in pertinent part:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *.

STATEMENT

1. *Proceedings before the Board.*—In November 1953, following a Board-conducted election held pur-

suant to consent agreements, the United Fresh Fruit & Vegetable Workers Union, L. I. U. No. 78, CIO (hereafter called the Union), was certified as the collective bargaining representative of the employees of each of the five Associations involved herein (R. 73; 6–8).[4] Shortly thereafter the Union and the Associations entered into negotiations for collective bargaining agreements (R. 73; 140, 190). Early in 1954, the Associations broke off negotiations (R. 74; 39–40, 143, 194, 198) and thereafter the Union filed unfair labor practice charges against each of the Associations alleging, among other things, unlawful refusals to bargain, in violation of Section 8 (a) (5) and (1) of the Act (R. 8–9).

Throughout the events described above, the Union was chartered directly by the CIO as a local without affiliation with any of the CIO's international unions (R. 47; 199). During this period, however, a committee on jurisdiction within the CIO had recommended that the Union affiliate with the United Packinghouse Workers of America, an international union holding membership in the CIO, which appeared to assert jurisdiction over the same groups of employees as those who belonged to the Union (R. 77; 199–200, 231). Acting upon this proposal, the Union and the

[4] Although separate hearings were held with respect to each of the five employers involved here, the facts pertinent to the question presented by the petition are fully developed in the *Santa Clara Lemon Association* case; these facts are substantially the same as those adduced in the other proceedings. Accordingly, unless otherwise indicated, the record references will be to the record in *Santa Clara* which is identified as Vol. V of the Transcript of Record filed in this Court.

Packinghouse Workers met in the spring of 1954 to discuss the matter, and decided to refer the question to the membership of the Union (*ibid.*). As a result, membership meetings of the Union were held throughout the area where it operated for the purpose of presenting, discussing and voting on the question of affiliating with the Packinghouse Workers (R. 77; 201, 321–232). Such a meeting was held in March 1954, in Oxnard, where about 150 members from the various citrus packing houses in the area, including the five Associations here involved, voted unanimously, following discussion, to accept the proposed affiliation (R. 88; 202–203, 231). The vote for affiliation was also "overwhelmingly" carried in the other meetings which where held, and in consequence the Union turned in its charter to the CIO, which canceled it; on July 1, 1954, a new charter was issued the Union by the Packinghouse Workers under the name "United Packinghouse Workers of America, Local 78, CIO" (R. 88, 228–229).

The officers of the Union at the time of its affiliation with the Packinghouse Workers continued in positions of authority thereafter (R. 227, 230, 238). DeShetler, CIO Regional Director for Region 13, testified that "the officers [were] still the same" at the time of the hearing "with the exception of the Administrator" whose "authority" was confined to "financial matters" (R. 230, 227, 235). Prior to the affiliation the Administrator was appointed by the CIO and thereafter by the Packinghouse Workers (R. 230). The Union, however, continued without interruption the same operations and administered the same collective bargaining contracts as before (R. 230, 235, 237–

238). Thus, one Union official testified at the hearing that all of the existing contracts were "accepted by all managements," with "the name * * * [of the Union] just * * * substituted" (R. 237).

On September 7, 1954, the newly chartered Union filed a motion with the Board's regional director, who had conducted the consent elections and had thereafter certified the Union as the bargaining representative of the Associations' employees (*supra*, p. 5), to amend the certification to reflect the change of affiliation (R. 33–34).[3] The regional director issued an order to show cause with respect to the motion, which was served on the Associations, and the latter filed oppositions thereto, alleging that the motion was an attempt "to substitute a new, different and non-certified union in the place and stead of the * * * only union elected by secret ballot" (R. 35–37). Thereafter, on September 21, 1954, the regional director granted the Union's motion and amended the certification to reflect the Union's change in affiliation (R. 88; 42–43).[4]

2. *The Board's decisions and orders.*—On the Union's charges the Board found that the Associations, among other things, had unlawfully refused to bar-

[3] The consent election agreements between the Associations and the Union, provided, *inter alia*, "that [the regional director's] rulings or determinations in respect of any amendment of any certification resulting [from the election] shall also be final" (R. 1).

[4] The order granting the motion specifically stated that the amendment of the certification "is not to be construed as a recertification" (R. 43). Thus, the amended certification, as the original one, ran in favor of the 18,000 member local originally certified under its previous name and not the 150,000 member Packinghouse International.

gain with the Union, in violation of Section 8 (a) (5) and (1) of the Act. To remedy those violations, the Board's order in each case requires the Association to bargain collectively with the Union, under its new name acquired upon affiliation with the Packinghouse Workers of America (R. 88–89). The Board rejected petitioners' contention that the Union after affiliation became a "new and different organization" with which it could not be required to bargain, and that the regional director had erred in amending the certification (R. 87–88; 77; *Carpinteria* record (Vol. I), pp. 63–65, 74). Upon the facts summarized (*supra*, pp. 3–5, the Board found that the union originally certified as the employees' bargaining representative remained substantially the same following its affiliation and that nothing more happened than a change of affiliation and name (*ibid.*). Accordingly, noting that the consent election agreement authorized the regional director to make amendments to certifications (*supra*, p. 5, n. 3), the Board concluded (R. 88), that the "Regional Director did not act arbitrarily or capriciously in the circumstances."

3. *The decision of the court below.*—The court below, with Judge Fee dissenting, in each case affirmed the Board's finding and enforced the order in full. Rejecting petitioners' contention that the regional director's action in amending the certification of the Union was "unlawful because the Packinghouse local is a new and different union from the Fruit and Vegetable Union originally chosen as bargaining agent," the court below stated (Pet. App. B, 5–6):

"The right of a successor union to assume the status of certified bargaining agent held by its predecessor depends on a factual issue—is the new union a continuation of the old union under a new name or affiliation or is it a substantially different organization? * * *

Although the Packinghouse Workers sent in a new financial administrator to replace the one previously furnished by the national CIO, the officers remained the same. There was no dilution of membership as a result of the change. Contracts concluded by the Fruit and Vegetable Union remained in effect except for the substitution of the union's new name. This testimony was not contradicted.

The Board adopted the Trial Examiner's finding that there was merely a change of name and affiliation. From our consideration of the record as a whole, we find that this determination is supported by substantial evidence.

ARGUMENT

The holding of the court below that the Union, after affiliation with the Packinghouse Workers, was a "continuation of the old union" and not "a substantially different organization" (Pet. App. B, 5–6), rests entirely upon the Board's factual finding, sustained by the court below, that "there was merely a change of name and affiliation" (*ibid.*). That finding, as the record summarized *supra*, pp. 3–5, shows, is adequately supported. The nub of petitioners' case here is that the Board and court below, in so concluding, "ignored or overlooked * * * other undisputed facts" which assertedly establish that more than a change of name and affiliation occurred (Pet.

10, 11). This challenge to the substantiality of the evidence supporting the Board's finding presents no question warranting further review by the Court. *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U. S. 498, 502–503.

Nor is the instant case in conflict with *Dickey* v. *National Labor Relations Board*, 217 F. 2d 652 (C. A. 6), relied on by petitioners and the dissenting judge in the court below. The different results in the two cases rest, not upon disagreement over principle, but rather upon the particular facts of each case. In *Dickey*, the Sixth Circuit concluded, on the record in that case, that the new organization resulting from the amalgamation or merger of the original union with another labor organization was in a substantial sense "a union different from the one actually chosen by the men and certified." 217 F. 2d at 654. That is not the case here. Cf. *Union Carbide and Carbon Corp.* v. *National Labor Relations Board*, decided May 14, 1957 (40 L. R. R. M. 2084) where the Sixth Circuit distinguished its earlier decision in *Dickey* and concluded that the merger of the certified union with another labor organization did not impair the union's status as bargaining agent of the employees involved. The court wrote (40 L. R. R. M. at 2085):

> We cannot agree with petitioner's contention that the Board acted arbitrarily and capri-

ciously in substituting the [Oil, Chemical, and Atomic Workers International Union, AFL-CIO] for the [United Gas, Coke and Chemical Workers of America, CIO]. The findings of the Board are amply supported by the evidence. Nor do we consider that *Dickey* v. *N. L. R. B.*, 217 F. (2d) 652 (C. A. 6, 1954) compels a different conclusion. Our holding there is distinguishable on several grounds. In the *Dickey* case, the court found that the merger resulted in a different organization from that originally certified. There, the members of the certified unit constituted only a fraction of the merged group and had no control over it.

In the instant case, there were no changes in the membership or officers of the local, or in its day-to-day relationships with the company. The Gas Workers were of comparable size with the Oil Workers and had an equal voice in deliberations and in the division of officers. In short, the consolidated group was intended to function as a continuation of its two constituent unions, so that the consolidation would not impair any of their certifications. For these reasons, our decision in the *Dickey* case is not controlling here.

It is apparent, therefore, that the decision of the court below is not in conflict with the holdings of the Sixth Circuit.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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